



**TENNESSEE
STATE DEPARTMENT OF EDUCATION
DIVISION OF SPECIAL EDUCATION
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MEMORANDUM

TO: Directors of Schools
Supervisors of Special Education

FROM: Joseph Fisher, Assistant Commissioner of Special Education

DATE June 12, 2002

Re: Withholding Educational Records and/or Grades for Debt

Near the end of each school year the Division receives numerous inquiries about the withholding of educational records and grades of children with disabilities pending payment of debts and/or fines owed to the school.

May a child with a disability (as defined by IDEA) be denied educational records including grade cards because of debts owed to the school?

T.C.A. § 49-3-310 addresses lost and/or damaged textbooks, permitting LEAs to promulgate rules which would allow among other sanctions "Withholding of all grade cards, diplomas, certificates of progress, or transcripts until restitution is made" for the textbook.

The Tennessee State Board of Education's Rules are even broader in scope.

Rule § 0520-1-3-.03 (13) authorizes LEAs to "withhold all grade cards, diplomas, certificates of progress or transcripts of a student who has taken property which belongs to a local education agency, or has incurred a debt to a school, until such student makes restitution in full." Students may not be sanctioned under this rule when deemed to be without fault for the debt.

However, federal regulations have historically been given precedence over state statutes and regulations. Article IV of the United States Constitution, The Supremacy Clause, provides that no state or state law shall be in conflict with the laws of the United States or the Constitution.

The federal special education regulations at 34 CFR § 300.562 provide in part,

Each participating agency shall permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency... (t)he right to inspect and review education records under this section includes—(t)he right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records.

It is the position of the Department that a child with a disability shall not be denied a copy of his/her educational record, including but not limited to grade cards, diplomas, transcripts, IEPs, progress reports, etc, notwithstanding the student's outstanding school debts. Such a denial would constitute a denial of FAPE.

cc: Bill Ward
Christy Ballard